



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 18, 2011

Mr. Tyler F. Wallach
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2011-03760

Dear Mr. Wallach:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 411555 (Fort Worth PIR No. W005805).

The City of Fort Worth (the "city") received a request for records pertaining to calls concerning animal cruelty and police checks in the month of November. You state the city will be releasing some of the reports to the requestor. You also state the city will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state, and provide affidavits

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147.

from the city's animal control department and police department stating, the information you have marked pertains to pending criminal cases. You explain the city's animal control department is charged with enforcing chapter 42 of the Texas Penal Code in conjunction with the city's police department. Based on your representations and the submitted affidavits, we conclude the release of this information would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle* and includes a detailed description of the offense and the identity of the complainant. See 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). However, we note a complainant's telephone number is generally not considered basic information. ORD 127 at 4 (stating only identity and description of the complainant are available to the public). Thus, with the exception of basic information, the city may withhold the information you have marked pursuant to section 552.108(a)(1) of the Government Code.²

Next, we address your argument against disclosure of portions of the basic information, as well as the remaining information you have marked under the common-law informer's privilege. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. The common-law informer's privilege, incorporated into the Act by section 552.101, has long been recognized by Texas courts. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. See Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." See Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5.

²As our ruling is dispositive for this information, we need not address your remaining arguments against its disclosure.

You state the submitted information you have marked identifies citizens who reported violations of the city code to city staff members charged with enforcement of the code. You inform us, and provide documentation showing, the reported violations are misdemeanors punishable by a fine of up to \$2,000 per day, per violation. Further, the submitted information does not indicate the individuals accused of the violations know the identity of the complainants. Based on your representation and our review, we agree the informer's privilege is applicable to most of the information you have marked. *See* Open Records Decision No. 156 (1977) (name of person who makes complaint about another individual to city's animal control division is excepted from disclosure by informer's privilege so long as information furnished discloses potential violation of state law). However, the informer's privilege does not protect the identity of a corporation that reports a violation of the law, as a corporation is not an individual. *See Roviato v. United States*, 353 U.S. 53, 59 (1957), Open Records Decision No. 515 at 2 (1988). In addition, individuals who provide information in the course of an investigation but do not make the initial report of the violation are not informants for the purposes of claiming the informer's privilege. Therefore, you have failed to demonstrate the remaining information you have marked identifies or tends to identify an individual who reported a violation to the city. Thus, except for where we have marked for release, the city may withhold the information you have marked under section 552.101 in conjunction with the informer's privilege.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information ("CHRI") confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. *See* Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). CHRI is defined as "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *See id.* § 411.082(2). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 in conjunction with Government Code chapter 411, subchapter F. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). However, section 411.083 does not apply to active warrant information or other information relating to a person's current involvement with the criminal justice system.

See id. § 411.081(b) (police department allowed to disclose information pertaining to person's current involvement in the criminal justice system). In addition, CHRI does not include driving record information. *See id.* § 411.082(2)(B) (term CHRI does not include driving record information). Upon review, we find portions of the submitted information, which we have marked, consist of CHRI that is confidential under chapter 411. Accordingly, the city must withhold the information we have marked under section 552.101 in conjunction with chapter 411 and federal law. However, none of the remaining information consists of CHRI for the purposes of chapter 411 of the Government Code. Accordingly, the city may not withhold any of the remaining information on that basis.

Section 552.101 of the Government Code also encompasses information protected by chapter 772 of the Health and Safety Code, which authorizes the development of local emergency communication districts. Section 772.218 of the Health and Safety Code applies to an emergency communication district for a county with a population of more than 860,000 and makes confidential the originating telephone numbers and addresses of 9-1-1 callers that are furnished by a 9-1-1 service supplier. *See* Open Records Decision No. 649 (1996). You state the city is part of an emergency communication district that is subject to section 772.218 of the Health and Safety Code. You state the telephone numbers you have marked were provided by a 9-1-1 service supplier. Based on your representations, we conclude the city must withhold the telephone numbers you have marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code.

Although you have marked the names of 9-1-1 callers in the remaining information, the plain language of section 772.218 states, and this office has determined, that confidentiality only applies to originating telephone numbers and the addresses associated with those numbers. *See* Health & Safety Code § 772.218(a), (c); Open Records Decision Nos. 649 at 3 (language of confidentiality provision controls scope of its protection), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public). Therefore, caller names may not be withheld under this section. You also have marked the address of a cellular telephone tower nearest the location of the caller. Such an address is not the originating address of the 9-1-1 caller and therefore may not be withheld under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code.

Section 552.101 also encompasses article 62.051 of the Code of Criminal Procedure. Article 62.051 of the Code of Criminal Procedure requires a sex offender registrant to provide the following information for the Department of Public Safety ("DPS") sex offender registration database: the person's full name; each alias; date of birth; sex; race; height; weight; eye color; hair color; social security number; driver's license number; shoe size; home address; a recent color photograph, or if possible, an electronic image of the person; a complete set of fingerprints; the type of offense the person was convicted of; the age of the victim; the date of conviction; the punishment received; an indication as to whether the

person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision; an indication of each license, as defined by article 62.005(g), that is held or sought by the person; an indication as to whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution; and any other information required by DPS. *See* Crim. Proc. Code art. 62.051(c). This information is public information with the exception of the person's social security number, driver's license number, telephone number, all information required by DPS outside of the enumerated categories of information, and any information that would identify the victim of the offense for which the person is subject to registration. *See id.* art. 62.005(b). Thus, the city must withhold or release the sex offender registration information we have marked that is subject to article 62.005 of the Code of Criminal Procedure in accordance with article 62.005(b).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Therefore, the city must withhold the Texas motor vehicle record information you have marked, and the additional information we have marked, under section 552.130 of the Government Code.³

In summary, with the exception of basic information, the city may withhold the information you have marked pursuant to section 552.108(a)(1) of the Government Code. With the exception of information we have marked for release, the city may withhold the information you have marked under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. The city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal law. The city must withhold the telephone numbers you have marked under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code. The city must withhold or release the sex offender registration information we have marked that is subject to article 62.005 of the Code of Criminal Procedure in accordance with article 62.005(b). The city must withhold the Texas motor vehicle record information you have marked, and the additional information we have marked, under section 552.130 of the Government Code. The remaining information must be released.⁴

³We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

⁴The remaining information contains a partial social security number subject to section 552.147 of the Government Code. Section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tamara Wilcox', written in a cursive style.

Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 411555

Enc. Submitted documents

c: Requestor
(w/o enclosures)